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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-290

STATE OF CALIFORNIA,
Petitioner

vs.

THOMAS HALPIN, REBECCA HALPIN and MARTIN SILVA,
Respondents

On Writ of Certiorari to the Supreme Court of the State of California

BRIEF IN OPPOSITION

STATEMENT OF FACTS[1]

A. On December 14, 1970, Respondent Thomas Halpin was arrested in Ontario, California, by San Bernardino County Sheriff's Deputies. At the time of his arrest, Halpin was driving a truck with a camper mounted on it, and while Halpin and the

[1]Respondents are satisfied with Petitioner's presentation of the Opinions Below, Jurisdictional Statement, Questions Presented, Constitutional and Statutory Provisions Involved, and with the Procedural Background aspect of the Statement of the Case. Rule 40(3).

truck were detained at the location where the arrest took place, a search warrant was obtained for the vehicle from a Magistrate upon the following oral showing:

A detective assigned to the San Bernardino County Sheriff's Department received a telephone call at approximately 8:05 on the morning of the 14th from a Pomona, California, Police Captain, who reported that he had been advised, at an unspecified time and by an unnamed informant, that on a Havasu Trailer Company lot in Ontario would be found, next to a blue Chevrolet, a white 1971 Ford Sport Custom truck with a dark green roof, mounted with a ten-and-a-half-foot camper, and bearing temporary license number 1291208. The informant further advised that a six-foot, 160-170 pound male with sandy hair, a moustache, horn-rimmed glasses and known only as "Tom" would be arriving on a flight from San Diego, again at an unspecified time, to pick the truck up. No information of a more personal nature, such as the man's age or a description of the clothing he would be wearing was furnished, but the informant did advise that the truck would have a false type body which would contain approximately $100,000 worth of marijuana. The record is devoid, however, of any statement by the informant as to the source of his information or the basis for his conclusions.[2]

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[2]The record does reflect that the informant furnished information on one prior occasion to the Pomona Police Department, and that an arrest and search predicated thereon resulted in the discovery of a large quantity of marijuana. That fact, however, has no bearing on the validity of the informant's conclusion in this case that the vehicle he described would contain marijuana.

Inspired by the rather meagre report thus obtained, Ontario Sheriff's deputies drove to the lot in question, which was open to the public, and determined that a truck fitting the informant's description was in fact parked there, in plain view, next to a blue Chevrolet. A surveillance was thereupon established in the area, and at approximately 11:30 a.m., a Volkswagen automobile pulled into the lot containing a man (Respondent Thomas Halpin) a woman (Respondent Rebecca Halpin) and a small child. The man fit the unremarkable description furnished by the informant, but since the car had a San Diego firm advertised on the license plate bracket, it was reasonably apparent that Respondent had not, as predicted by the informant, "arrived on a flight from San Diego."[3]

Halpin exited the automobile, went into the trailer company office, remained a short while and then returned to his car and drove away. At no time during this visit did he approach the truck.

Surreptitiously followed by deputies, the Halpins drove to a nearby resort area where they frolicked in the snow for two hours, an activity which could hardly be described as criminally oriented.

At approximately 2:30 p.m., the Volkswagen with its three occupants returned to the camper lot, and

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[3]Had Halpin in fact come by plane, one would expect that he would thereafter be travelling in an automobile bearing indicia of local origin. Moreover, it should be noted in any case that as far as the record reflects, no effort was made to conduct a surveillance or other investigation at the local airport. As represented at the hearing on the Motion to Suppress, only two flights per day arrived in Ontario from San Diego, and it would thus have been a simple matter to determine whether Respondent Halpin arrived on one of them.

this time Thomas Halpin innocently got into the truck, by himself, and drove off. The deputies followed the vehicle for a short distance and then pulled it over. Halpin exited the truck, shut and locked the door behind him, and was immediately placed under arrest. He declined to permit the deputies to search the vehicle, but under compulsion submitted to a search of his person, which produced identification bearing the name "Thomas Allan Halpin."

B. After the search warrant was obtained, Halpin was transported from the location where he was arrested to the Sheriff's West End Substation, where he was given permission to make the familiar one telephone call. He furnished a San Diego number to a deputy, who placed the call for him, but unbeknownst to Halpin or his wife, who received the call, the entire conversation was monitored and taped, although at the point Halpin had been formally accused of nothing and had not been taken before a magistrate. The tape was subsequently played before a Grand Jury, and provided the only evidence that may be thought to be of any substance with respect to Respondent Rebecca Halpin.

The statute which authorized the phone call provides that the call is to be made "in the presence of a public officer or employee," Calif. Penal Code, Section 851.5, but the record is silent as to whether any deputies were in fact in Halpin's immediate presence while he spoke with his wife, and no effort was ever made by the Petitioner herein to establish on a factual basis that Respondent Thomas Halpin waived his Constitutional and statutory rights to privacy.

REASONS WHY A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

I

THE SEARCH WARRANT ISSUE POSED BY PETITIONER IS NOT A SIGNIFICANT ONE

Petitioner contends that the Supreme Court of California misunderstood the two-pronged test of *Aguilar v. Texas,* 378 U.S. 108 (1964) as illuminated by the decisions rendered in *Draper v. United States,* 358 U.S. 307 (1959) and *Spinelli v. United States,* 393 U.S. 410 (1969) and, for that reason, erroneously concluded that the search warrant in issue failed to meet Constitutional standards.

It cannot seriously be disputed that the search warrant did not, as *Aguilar* requires, inform the magistrate about any of the underlying circumstances that led the informant to believe that the marijuana was where he claimed it was, *Aguilar v. Texas, supra* (378 U.S. at 114). But, says Petitioner, that should not necessarily be controlling because in Petitioner's view, a reasonable inference of reliability with respect to the informant's conclusion might have been drawn from the rather insignificant details with which the magistrate was furnished.

This Court, then, is being asked to grant certiorari to resolve Petitioner's doubts regarding the ability of a California Supreme Court unanimous in its conclusion to make reasonable inferences from factual detail.

Petitioner briskly dispatches the issue upon which certiorari is actually sought in order to apprise the Court of the allegedly "larger" issue that might be

obscured by the transparently exiguous one. The "larger" issue, we are told, is the necessity immediately to resolve the uncertainty created by the *Aguilar-Spinelli-Draper* trilogy. (Petition for Writ of Certiorari, pp. 16-18) If such an uncertainty needs resolution then it must appear in a case unlike this one. An "uncertainty" plea has a hollow ring when this Court is asked to review a unanimous conclusion of the California Supreme Court that does no more than apply that Court's three-year-old decision in *People v. Hamilton,* 71 Cal.2d 176 (1969), a decision which Petitioner understandably neglects to refer to.

If one imagines a case which meets all the criteria for not appearing on this Court's docket it is, we think, one in which this Court is asked to review a State Supreme Court's determination of the inferences to be drawn from factual detail in order to give unambiguous guidance in applying its own precedent of three years standing.

II

THIS CASE PRESENTS NO SIGNIFICANT QUESTION ABOUT THE PREEMPTION SECTION OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

The court below simply applied the clear language of 18 U.S.C. §§2510-20 to the facts at hand. There was no warrant (or even statutory authorization for a warrant): Therefore, the eavesdropping was prohibited. There is no question here of implied pre-

emption, the Federal statutes expressly preempt the field. All a state need do in order to engage in statutorily valid electronic eavesdropping is adopt the prescribed procedures.

But, says Petitioner, Congress has gone too far: it lacks the power to control eavesdropping on telephone communications where communications from a jail to an outsider are concerned; Congress has invaded powers secured to the states by the Tenth Amendment.

Petitioner, once again, asks a lot of this Court in a case which, factually, cannot support the novel ruling which is sought. Asking this Court to hold that Congress's interstate commerce powers do not extend to telephone lines is asking this Court to ignore all reason and precedent. It seems inordinately ambitious to request such a departure in a case in which the telephone line in question was being used by a person in custody who: a) had neither been formally charged nor convicted of any crime; b) had not yet been taken before a magistrate to be advised of his rights and to have bail fixed; c) was exercising his statutory right to make a telephone call for assistance following his arrest; d) was talking to his wife, with whom his communications were privileged, and e) had not been let in on the fact that there were uninvited listeners on the line.

The last point seems particularly critical. If the state is worried about jail security then it need merely inform all persons using its jail phones that

the conversations will be listened to. Interposing the Tenth Amendment against congressional interstate commerce powers is hardly necessary.[4]

CONCLUSION

For all the reasons mentioned, Respondents respectfully urge that the Petition for Writ of Certiorari should be denied.

Dated, October 6, 1972.

Respectfully submitted,

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[4]We realize that Petitioner maintains that consent to an eavesdrop implicitly existed by virtue of California Penal Code §851.5. (Petition for Writ of Certiorari, pp. 22-24) We doubt that the California Supreme Court would have found merit in the contention had it been raised at a point earlier than the petition for rehearing below but, in any event, the construction of a California statute is a question for the California Courts.